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Supreme Court of the United States

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No. 302.

DISTRICT OF COLUMBIA, *Petitioner*,

v.

GERALDINE LITTLE, alias MILDRED PARKER, *Respondent*.

SUPPLEMENTARY BRIEF IN BEHALF OF THE MEMBER CITIES OF THE NATIONAL INSTITUTE OF MUNICIPAL LAW OFFICERS AS AMICI CURIAE.

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The fundamental error in the case at bar arises from the failure of the court to recognize that sanitary inspections cannot be made from a court house. It is not a question of the inconvenience involved in procuring a warrant every time there is a complaint as to insanitary conditions. It is the fact that public health c nnot be protected merely by following up warrantable complaints. The major public health and safety programs in this country are grounded in the concept that it is through prevention of conditions which result in health and safety hazards, and not by the punishment of violators, that the public welfare is best protected.

The decision of the Court of Appeals in the case at bar destroys the system of preventive inspections and makes health officers mere process servers for the purpose of abating conditions which have already grown to the stature of public menace. This decision is of vital importance because effective health and safety administration is not based upon complaints but is the result of periodic scientific checks by trained inspectors to determine health and safety conditions. If these inspectors are to be stopped at the door, except in cases where probable cause can be established by sworn affidavits, the preventive health and safety programs based upon scientific checks will grind to a standstill in large cities throughout the country.

So great is the impact of this decision upon cities throughout the country that the National Institute of Municipal Law Officers, which is composed of the law officers of 550 major cities, felt impelled to present the problems to this court. It is the failure of the court below to comprehend the nature and gravity of the problem and the far-reaching implications of its decision that makes this seemingly minor case one of national importance.

The fact situation is not in dispute. A complaint was filed with the Health Department of the District of Columbia by an occupant of residential property belonging to one Geraldine Little, stating that there was an accumulation of loose and uncovered garbage and trash in the halls of the premises and that persons residing therein were not availing themselves of the toilet facilities. A uniformed inspector of the Health Department, accompanied by a uniformed member of the metropolitan police, went to the residence to inspect it. The owner refused to allow the inspection on the ground that the inspector could not enter her home without a warrant. She was arrested for hindering, obstructing and interfering with an inspector of the Health Department in the performance of his duty.

The owner was convicted in the trial court, but on appeal to the District Court of Appeals for the District of

Columbia the conviction was reversed. The United States Court of Appeals for the District of Columbia, in an opinion by Prettyman and Proctor, JJ., affirmed the decision of the Municipal Court of Appeals for the District of Columbia, holding that the inspection of a private dwelling by a health inspector without a warrant was unconstitutional under the Fourth Amendment to the Constitution of the United States. The Court held that the District of Columbia inspector could not invade a private home unless a magistrate had authorized him to do so upon sworn affidavits. Alexander Holtzoff, District Judge, dissented, contending that the Fourth Amendment related only to criminal or quasi criminal actions and had no application to health and safety inspections, which could be conducted without warrants.

The Fourth Amendment to the Constitution prohibits unreasonable searches and seizures in the following language:

> "The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Up until the instant case, the Fourth Amendment has been applied only to criminal prosecutions and proceedings of a quasi criminal nature for the enforcement of penalties. It has never been invoked to prevent reasonable inspections by health, safety and other municipal inspectors.

No provision for search warrants to implement the inspections by health and safety inspectors is made in the laws and ordinances which regulate the health and safety of cities throughout the country. The right of entry by an inspector at reasonable hours is either expressly provided for or is implicit in his duties. It has been taken for

granted in all parts of the country, from the inception of health and safety programs, that no search warrants are necessary for the purpose of routine inspections.

As Judge Holtzoff so clearly pointed out in the dissenting opinion in this case, the conclusion of the court that a warrant is necessary may require the suspension of most inspection services. Judge Holtzoff stated:

> "Specifically, there is no existing statute under which a health inspector, a plumbing inspector, or a building inspector may obtain a warrant authorizing him to enter a building for the purpose of a routine inspection. It has always been assumed that no search warrant is necessary. On the basis of the conclusion of the Court in this case, these officers may have to suspend their function of inspection until and unless the Congress passes an Act authorizing the issue of search warrants for this purpose. In the interim the District of Columbia may be confronted (fol. 44) with a serious situation.
>
> "Moreover, even if an Act providing for such search warrants should be placed upon the statute books, how can an inspector make a showing of probable cause as a basis for the issuance of a warrant for the purpose of an ordinary, routine examination? Regular periodic inspections are conducted for the purpose of making certain that laws relating to sanitation and safety are being observed. Such examinations are not confined to situations in which there is a suspicion that the law is being violated. It is necessary that periodic inspections be regularly made for the purpose of securing observance of the laws and regulations relating to the safety and health of the community."

The argument that the inspection involved in the case at bar was an infringement of the sanctity of the home guaranteed by the Fourth Amendment is clearly untenable.

No one doubts the validity of protecting the right of privacy. It is not a right, however, which is inviolate in modern living. There are assaults upon our privacy every day of our lives. The gas man who enters to read the meter, the water assessor who counts the faucets and checks leak-

ages, the plumber who inspects for contamination from waste,—these are all assaults upon our privacy which we accept as part of the price of living in a complex society. To say that we will accept those invasions, but can bar the entry of inspectors who "invade" for the purpose of protecting the public health and safety is to fail to balance the conflicting rights in accordance with their relative weight. Significantly, the entrance of the health inspector in the case at bar was for the protection of the home-owner as well as the rest of the community.

The modern "castle" is not only covered by a mortgage but is connected to a central water system, a sewage system, a garbage collection system. Can it be said that the meter-man may come in to check the amount of gas used and whether the gas is leaking but the municipal authorities may not come in for the purpose of determining the city's Hooper rating on sanitary standards?

The householder who buys a house in a city and pays taxes for the purpose of procuring essential municipal services, impliedly agrees to give such access as is necessary to keep these services at a proper level of efficiency. To say that a resident who endangers her health and the health of others may barricade herself behind the Fourth Amendment is to ignore wholly the constitutional right of other residents to lead lives free from avoidable hazards.

The logical extension of the Court's opinion would mean that inspection of the plumbing and electrical work in a home could only be done upon warrant, if the householder refused to allow admission. The checking of hot air furnaces to determine their safety and of coal furnaces to determine whether proper combustion is achieved so as to comply with smoke control laws, could not be done without a warrant, if the householder stood upon his constitutional rights. Warrants would be required to determine the source of sewage drainage and water leakage.

If the concept of a man's castle being impregnable is carried to its logical conclusion, the assessment officers would not be permitted inside to determine the value of

property but would be required to guess its value for taxing purposes. Infractions of the Zoning Law as to number of occupants in buildings could not be determined, since the man in his castle could refuse to allow the inspector to come in and see how many kitchen sinks and cooking stoves were crowded into an illegal space. The United States census takers are not only invading the privacy of the castle but ask very searching questions as to repairs made, purchases made, the age and income of occupants. They too could be stopped at the threshold as invading private rights.

In protecting nebulous private rights, important and immeasurable public benefits have been jettisoned by the Court in the case at bar.

Illustrative of the advancement in safety made through preventive inspection in private homes is the data assembled in connection with fire prevention programs. For every complaint that there is an accumulation of waste paper in a cellar which constitutes a fire hazard, there are thousands of instances where no complaint has been made and where inspectors have gone into the cellars of home after home and warned the householders to remove the accumulations of papers which might result in fires. It is this preventive program that has so drastically reduced the fire hazards in this country. It has been part of a scientific plan to educate the householder into avoiding catastrophes rather than concentrating municipal efforts upon extinguishing fires after they have occurred.

The same thing is true in connection with garbage, one of the greatest sources for the spread of disease in this country. If the health officers of all the cities of the country are to wait for the complaint of neighbors and then issue warrants predicated upon the information received, a staggering blow will have been dealt to the effective work that has thus far been done in curbing epidemics in this country. For every neighbor that complains, there are thousands who are unwilling to become involved in a back-door fight and who are unwilling to become litigants in or-

der to preserve the health of their community. There are others who are phlegmatic to the danger and still others who are joint offenders.

The control of garbage collection,—the establishment of proper methods for wrapping garbage, the requirement of covered receptacles and frequent collection,—is regarded as a primary concern of health officers all over the country. The annual cost to the City of Pittsburgh for garbage and rubbish collection is $2,600,000. The City of New York spends $41,700,000 a year for the same purpose; Baltimore, $2,203,000; Cincinnati, $1,242,000; Columbus, Ohio, $624,000. Speaking conservatively, approximately $400,000,000 is spent annually in urban centers for the collection and disposal of garbage and rubbish.

It is not just the zeal to render a convenient service that impels the cities to spend such enormous sums of money; it is because of the recognition of the fact that the control of garbage is the primary step in the control of certain very serious diseases. For example, the danger of typhus, where the infection results from the bite of insects borne by rats, is tremendously increased where the garbage sanitation is not adequately controlled.

The enormity of the problem, its direct relation to the health and welfare of the people, was never appreciated by the Court of Appeals. The Court envisaged cases where health inspectors would interfere with the privacy of women in their homes and come to take bacteria counts at dinnertime and interfere with the family television hour. No such instances are involved in this case, nor is it the practice of inspectors to harass and to act out of caprice. It is regrettable that the Court's imagination was not equally vivid as to the lurid effects of uncovered garbage and the epidemic possibilities from rats and flies living on garbage and filth.

Mr. Justice Frankfurter, speaking for this Court only last June, recognized the various forms of redress available against the searching officer when he said, in *Wolf*

v. Colorado, 338 U. S. 25, 30: "The jurisdictions which have rejected the *Weeks* doctrine have not left the right of privacy without other means of redress." This statement was supported by an impressive collection of cases and statutes vindicating the individual's right to be protected against *unreasonable* searches.

The rule of reasonableness which has been developed in cases passing upon due process laws is always a protection against the capricious action of government officials. It cannot be doubted that the extreme situations presented by the court below which might ensue from the inspection by health officials without warrants, could be relieved against if they transpired.

For the court to characterize a complaint on uncovered and loose garbage and the failure to use toilet facilities as "silly" is to evidence only too clearly the court's complete unfamiliarity with the operation of the public health program and unawareness as to how intimately it is tied up with the hazards of urban living.

The case of the open garbage can may not be as intriguing to students of constitutional law as a case involving freedom of speech and assembly, but the assemblage of germs can have an equally far-reaching impact. One germ, after thirty divisions, becomes one billion germs—a formidable armed enemy. We are not speaking fancifully, but realistically, when we refer to our health officers as our shock troops. To municipal officers, in constant touch with health and safety problems, it is impossible to shrug off the very real dangers that lurk in the everyday problems of sanitation.

The holding in *Wolf* v. *Colorado*, 338 U. S. 25, that the Fourth Amendment is encompassed within the concept of due process and is therefore applicable against the States, makes the question presented in this case of tremendous importance to urban municipalities. Mr. Justice Frankfurter stated, at 338 U. S. 27: "The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free so-

ciety. It is therefore implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause."

The established inspection procedures carried out by health and safety authorities in these municipalities would be threatened if the holding of the court below is sustained. As a consequence, local opposition would no doubt develop against the periodic inspections of health and safety conditions in private homes. And if Litigation ensues, the State courts, with the *Wolf* case and the case at bar before them, would have no choice but to strike down the regularly established inspection practices which are now followed.

We cannot urge too strongly the practical administrative obstacles to operating inspection systems through warrants. It just cannot be done that way. Getting a warrant would be entirely possible in a certain portion of the cases where complaints are received and the complainants are willing to sign affidavits or where a nuisance situation has reached the point where it can be seen and smelled.

Olfactory health control is no answer to the major health problems of this country. The violations that smell represent too small a portion of the whole. By the time putrefaction sets in, very valuable time has been lost and an emergency phase has set in. The whole public health program is predicated upon the basic principle that improper practices must be corrected and abated *before* they reach the state of nuisance and glaring danger. A situation is clearly out of bounds from the control point of view when it is so bad the adjoining neighbors can smell it and complain.

The language used by this Court in tackling the then formidable problem of zoning, as expressed in *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365, at 386-387, is significantly apt:

> "Building zone laws are of modern origin. They began in this country about twenty-five years ago. Un

til recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are not uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive.

"Such regulations are sustained, under the complex conditions of our day, for reasons analogous to those which justify traffic regulations, which, before the advent of automobiles and rapid transit street railways, would have been condemned as fatally arbitrary and unreasonable. And in this there is no inconsistency, for while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation. In a changing world, it is impossible that it should be otherwise."

A brief covering the history of the Fourth Amendment and the court decisions relative to the legal problems involved in this case was filed in support of the Petition for a Writ of Certiorari herein. The legal authorities and arguments presented are not repeated but it is respectfully requested that this Honorable Court consider the arguments and authorities there presented as a part of this supplementary brief.

Conclusion.

In conclusion, it is earnestly submitted that it has been the vigilance of public health officers and their well-integrated programs that has saved this country from some of the epidemics, scourges and health menaces that would inevitably have occurred. To shackle health and safety officers would inevitably result in decimating these vital health and safety activities.

The construction placed upon the Fourth Amendment is a strained and unnatural construction when applied to the facts in the case at bar. Like Procustes, who placed his victims upon racks, stretching them if too short and lopping them off if too long, the Court below has taken the provision of the Amendment for the protection against crimes, stretched it beyond its reasonable scope and applied it to a fact situation where it has no proper application. The Constitutional Amendment, enacted to protect the people, is used as a springboard for immeasurable public detriment.

It is earnestly submitted that there has been no case before the Supreme Court since the famous *City of Euclid* zoning case which so vitally affects the health and safety of the millions of people living in metropolitan areas throughout the country. The decision of the Court below should be reversed.

Respectfully submitted,

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